

OPEN MEETING ITEM



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COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ORIGINAL



ERNEST G. JOHNSON
Executive Director

ARIZONA CORPORATION COMMISSION 2011 AUG 22 A 9:23

AZ CORP COMMISSION
DOCKET CONTROL

DATE: AUGUST 22, 2011

DOCKET NO.: RR-03639A-11-0093

TO ALL PARTIES:

Arizona Corporation Commission
DOCKETED

AUG 22 2011

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

UNION PACIFIC RAILROAD
(REMOVE AT-GRADE CROSSING/
INSTALL GRADE SEPARATED CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

AUGUST 31, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 8, 2011

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF
9 THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO BOTH CONSTRUCT
11 A NEW GRADE SEPARATED CROSSING AND
12 TO REMOVE THE EXISTING AT-GRADE
13 CROSSING OF THE UNION PACIFIC
14 RAILROAD AT PRINCE ROAD IN THE CITY
15 OF TUCSON, PIMA COUNTY, ARIZONA.

DOCKET NO. RR-03639A-11-0093

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING:

July 6, 2011

12 PLACE OF HEARING:

Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

14 APPEARANCES:

15 Mr. James R. Redpath, Assistant Attorney General, on
16 behalf of the Arizona Department of Transportation;

17 Mr. Terrance L. Sims, Beaugureau, Hancock, Stoll &
18 Schwartz, P.C., on behalf of the Union Pacific Railroad
19 Company; and

Ms. Bridget Humphrey, Staff Attorney, Legal Division,
on behalf of the Safety Division of the Arizona
Corporation Commission.

20 **BY THE COMMISSION:**

21 On February 28, 2011, the Arizona Department of Transportation ("ADOT") filed with the
22 Arizona Corporation Commission ("Commission") an application for approval for ADOT to both
23 construct a new grade separated crossing at USDOT No. 412 487 A and to remove the existing at-
24 grade crossing at USDOT No. 741 105 J of the Union Pacific Railroad ("Railroad") at Prince Road in
25 the City of Tucson ("Tucson"), Pima County, Arizona ("Application").

26 On April 6, 2011, by Procedural Order, a hearing on ADOT's Application was scheduled on
27 July 6, 2011.
28

1 On May 10, 2011, ADOT filed certification that it had provided public notice of the
2 proceeding pursuant to the Commission's Procedural Order.

3 On May 27, 2011, the Commission's Railroad Safety Section of the Safety Division ("Staff")
4 filed its Staff Report recommending approval of the Application.

5 On July 6, 2011, a full public hearing was convened before a duly authorized Administrative
6 Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the Railroad and Staff
7 appeared with counsel. At the conclusion of the hearing, the matter was taken under advisement
8 pending submission of a Recommended Opinion and Order to the Commission.

9 * * * * *

10 Having considered the entire record herein and being fully advised in the premises, the
11 Commission finds, concludes, and orders that:

12 **FINDINGS OF FACT**

13 1. On February 29, 2011, ADOT filed an Application for approval for ADOT to both
14 construct a grade separated crossing at USDOT No. 412 487 A and to remove the existing at-grade
15 crossing at USDOT No. 741 105 J of the Railroad at Prince Road in Tucson. The new grade separated
16 crossing will be located approximately 200 feet southeast of the existing at-grade crossing.

17 2. On April 6, 2011, by Procedural Order, a hearing was scheduled on the
18 Application.

19 3. On May 27, 2011, Staff filed its report recommending approval of the Application for
20 the removal of the existing at-grade crossing at Prince Road and for the construction of a new grade
21 separated crossing, which will eliminate the need for the at-grade crossing.

22 4. ADOT's Application describes the project as "rebuilding Interstate 10 ("I-10") from
23 just east of Ruthrauff Road to just east of Prince Road." I-10 will be lowered to ground level and will
24 be widened to eight lanes. The roadway will be paved with concrete, and an overpass will be
25 constructed at Prince Road allowing it to pass over both I-10 and the Railroad's right-of-way where
26 the tracks are located.

27 5. When construction begins on the project, public traffic will be detoured away from the
28 at-grade crossing of Prince Road so that it may be widened from four lanes to seven lanes with raised

1 medians and sidewalks. When construction of the overpass is completed, the existing at-grade
2 crossing will be removed and access will continue to and from I-10 at Prince Road, which will then
3 pass over I-10 and the Railroad's tracks.

4 6. Pursuant to the Commission's Procedural Order, ADOT provided all interested parties
5 with notice of the Application and hearing thereon by both U.S. mail and publication in the *Arizona*
6 *Daily Star* newspaper.

7 7. The hearing was held as scheduled on July 6, 2011.

8 8. Mr. Robert Travis, the Railroad Liaison for ADOT, testified in support of the
9 Application.

10 9. Mr. Travis described the nature of the project and stated that ADOT had entered
11 into a "fully executed agreement" with the Railroad for the construction of the grade separated
12 crossing and the removal of the existing at-grade crossing at Prince Road. (Tr. 6: 9-10)

13 10. Mr. Travis testified that ADOT has received bids and has determined the low
14 bidder for the project and anticipates construction to start sometime later this summer or in the
15 fall. (Tr. 6: 21-25)

16 11. According to Mr. Travis, at the beginning of the project, the Prince Road at-grade
17 crossing will be closed to the general public, but the contractor, subject to permits from the Railroad,
18 and ADOT will be allowed to use it as construction takes place within the Railroad's right-of-way.
19 (Tr. 7: 1-6)

20 12. Testifying further, Mr. Travis stated that ADOT expects to reopen the new Prince
21 Road overpass after approximately 24 months of construction and at that time the at-grade crossing
22 will be removed. (Tr. 7: 7-9)

23 13. Mr. Travis testified that during the construction project, concrete barriers will be put in
24 place to restrict traffic across the at-grade crossing by the general public, insuring that only the
25 contractor and ADOT will have access to the at-grade crossing. (Tr. 8: 1-16)

26 14. According to Mr. Travis, as the project is completed and the overpass is installed,
27 ADOT's contractor will remove the roadway approaches to the at-grade crossing on Prince Road and
28

1 the Railroad will then remove the crossing surface and warning devices at the existing at-grade
2 crossing. (Tr. 9: 6-13)

3 15. Mr. Travis also testified that ADOT has requested a minimum of 30 months from the
4 date of the Commission's Decision in this matter to allow for the completion of the entire project.
5 The grade separated crossing will be completed during the first phase of construction in a 24-month
6 timeframe, and the remaining six months will be used to allow the Railroad enough time for the full
7 removal of the Prince Road at-grade crossing during the second phase of construction. (Tr. 9: 14-19)

8 16. Mr. Travis testified that the Prince Road grade separation project is being partially
9 funded by the federal government. Due to the use of federal funds, pursuant to federal regulations, it
10 is prescribed that the Railroad pay five percent of the approximate cost of the grade separation
11 project. As a result, the Railroad will be contributing approximately \$668,178 towards this part of
12 the project. (Tr. 10: 6-22)

13 17. According to the Staff Report, the project will be funded by the following entities: the
14 Federal Highway Administration ("FHWA"); Tucson; the Pima Association of Governments
15 ("PAG"); ADOT; and the Railroad. The total cost of the entire project will be approximately \$115
16 million, which also includes the Prince Road grade separation project estimated at \$5.1 million.

17 18. Mr. Travis further testified that he had been told by the project manager that a
18 general study of the entire I-10 corridor in the Tucson area from Tangerine Road to Interstate 19
19 had been completed in the 1990s. The study included the widening of I-10 as described previously
20 and for the construction of a grade separated crossing at Prince Road. (Tr. 12-13: 19-2)

21 19. According to Mr. Travis, ADOT is in the process of developing a design concept
22 report for the widening of I-10 to its ultimate width (eight lanes), and for constructing grade
23 separated crossings at Ruthrauff, Ina, and Cortaro Farm Roads. Although ADOT is looking as far
24 north as Tangerine Road, ADOT is not planning to construct a grade separation at that
25 location. (Tr. 13: 17-24)

26 20. Mr. Travis stated that the areas along I-10 where the aforementioned crossings
27 are located, including the Prince Road crossing, are primarily commercial and industrial
28 areas. (Tr. 16: 12-16)

1 21. Mr. Travis further testified that while construction is taking place at Prince Road
2 there are two alternative crossings in the area: Ruthrauff Road – an at-grade crossing,
3 approximately two miles to the northwest; and Miracle Mile Road – a grade separated crossing
4 approximately one mile to the southeast. (Tr. 22: 15-25)

5 22. According to Mr. Travis, ADOT is considering the construction of a grade
6 separation in the near future at either Ruthrauff or Ina Roads, but a final decision has not yet been
7 made as to which crossing will have construction first. (Tr. 23:1-13)

8 23. Mr. Travis further stated that ADOT has also consulted with the area's school
9 districts and with emergency service providers concerning the detours, and has been informed
10 that their traffic will utilize the crossings at either Ruthrauff Road or Miracle Mile Road during
11 the construction at Prince Road. (Tr. 23-24:22-2)

12 24. Mr. Chris Watson, Staff's Grade Crossing Inspector and Assistant Supervisor for the
13 Railroad Safety Section, testified that he adopted the Staff Report as his testimony in the proceeding.
14 (Tr. 31:4-15)

15 25. Mr. Watson further testified that Staff is recommending that the Commission approve
16 the Application filed by ADOT in this proceeding and believes that the proposed grade separated
17 crossing at Prince Road will serve the public interest. (Tr. 32: 2-10)

18 26. Mr. Watson stated that ADOT's proposal to construct a grade separated crossing in the
19 manner which is planned for the Prince Road crossing of I-10 and the Railroad's tracks is consistent
20 with other grade separated crossings within the State of Arizona. (Tr. 32: 11-14)

21 27. With respect to ADOT's request for Commission approval for the completion of the
22 grade separated crossing and for the removal of the at-grade crossing at Prince Road, Mr. Watson
23 recommends approval of ADOT's request in its Application to allow the Railroad to have up to
24 30 months from the effective date of the Commission's Decision in this matter for the removal of
25 the at-grade crossing. (Tr. 32:15-19)

26 28. Testifying further, Mr. Watson stated that once the at-grade crossing of Prince Road
27 is closed, Staff would not consider it a public crossing and instead would consider the at-grade
28

1 crossing a private crossing because only ADOT or its contractors will be able to utilize the crossing
2 until it is removed. (Tr. 33: 16-20)

3 29. Mr. Watson further testified that flagmen would probably be utilized at the at-grade
4 crossing for construction traffic in addition to the safety devices that will remain until the crossing is
5 removed, to provide additional safety when construction is taking place. (Tr. 33-34: 21-1)

6 30. Mr. Watson further testified about the different ways that the Railroad will go about
7 protecting itself and the contractors who are working on the construction project for the grade
8 separated crossing when trains are passing through the area. Among these measures, the Railroad
9 will include certain restrictions such as reducing train speeds during construction. (Tr. 35: 10-18)

10 31. Staff believes that the closure of the at-grade crossing and the construction of the
11 grade separated crossing at Prince Road are in the public interest and will promote safety for the
12 traveling public. (Tr. 35: 19-24)

13 32. After construction is completed, the Railroad will maintain the track and its right-of-
14 way and ADOT will maintain the grade separated structure where Prince Road will pass over I-10
15 and the Railroad's tracks. (Tr. 36: 4-9)

16 33. Staff's recommendations are reasonable and appropriate, and the Railroad's
17 Application for the approval of the construction of the grade separation and the removal of the
18 at-grade crossing at Prince Road should be approved.

19 **CONCLUSIONS OF LAW**

20 1. The Commission has jurisdiction over the parties and over the subject matter of the
21 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
22 40-337.01.

23 2. Notice of the Application was provided in accordance with the law.

24 3. The removal of the at-grade crossing and construction of the grade separated crossing
25 at Prince Road are necessary for the public's convenience and safety.

26 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
27 recommended by Staff.

28 5. The Railroad shall have 30 months from the effective date of this Decision in which to

1 complete the removal of the at-grade crossing of Prince Road.

2 6. After the construction of the grade separated crossing, the Railroad should maintain its
3 right-of-way beneath the grade separated structure consistent with A.A.C. R14-5-104.

4 **ORDER**

5 IT IS THEREFORE ORDERED the Arizona Department of Transportation's Application as
6 described herein, is hereby approved.

7 IT IS FURTHER ORDERED that the Union Pacific Railroad shall complete the removal of
8 the Prince Road at-grade crossing as described in the Application within 30 months of the effective
9 date of this Decision.

10 IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in
11 writing, within 10 days of both the commencement of the construction of the grade separated crossing and
12 the completion of the removal of the at-grade crossing of Prince Road, pursuant to A.A.C. R14-5-104.

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1 IT IS FURTHER ORDERED that upon completion of the removal of the at-grade crossing of
 2 Prince Road and the construction of the grade separation at Prince Road, the Union Pacific Railroad
 3 shall maintain its right-of-way in compliance with A.A.C. R14-5-104.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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 7
 8 CHAIRMAN COMMISSIONER COMMISSIONER

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 11 COMMISSIONER COMMISSIONER

12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
 13 Executive Director of the Arizona Corporation Commission,
 14 have hereunto set my hand and caused the official seal of the
 15 Commission to be affixed at the Capitol, in the City of Phoenix,
 16 this ____ day of _____, 2011.

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ERNEST G. JOHNSON
 EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

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2 DOCKET NO.: RR-03639A-11-0093

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